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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,585	03/18/2004	Kathleen Nylund Jackson	47079-00299USPT	7261
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NIXON PEABODY LLP			EXAMINER	
161 N CLARK ST.			HU, KANG	
48TH FLOOR				
CHICAGO, IL 60601-3213			ART UNIT	PAPER NUMBER
			3715	
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			04/01/2009 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/804,585

Applicant(s)

JACKSON, KATHLEEN NYLUND

Examiner

KANG HU

Art Unit

3715

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Kathleen Mosser/
Primary Examiner, Art Unit 3715

Continuation of 11, does NOT place the application in condition for allowance because: Applicant's arguments filed 2/27/2009 have been fully considered but they are not persuasive.

Re argument A, the applicant's argument page 10, starting from "Acres does not disclose randomly selecting players as all players in Acres receive a consolation prize in any of the multi-player bonus forms. Thus Acres does not disclose excluding players from being awarded any prize." The examiner respectfully disagrees, the claim recites "randomly selecting ... to be awarded the randomly selected bonus prize" In Luciano, though all players may receive a consolation prize, not all receive it from the "mystery prize" taught by Acres. Acres teaches random selection of mystery prizes based on the mystery threshold to randomly award a car, large cash prize or a rapid hit mystery prize randomly awards progressively larger cash prizes to the winners.

Re argument B, the applicant's argument starting on page 11, limitation of "excluding at least one player from being awarded any bonus" in addition to "randomly selecting more than one but less than all of said players to be awarded the randomly selected bonuses and excluding at least one player from any bonus." Previously the examiner cited col 4, lines 30-32, "the bonus prize can also be tiered into a main bonus prize and multiple secondary bonus prizes, plus optional consolation prizes, and similar combinations." The examiner interprets the teaching differently from the applicant, the paragraph states "according to the invention, bonus prizes are awarded as part of bonus promotions. The gaming industry is highly regulated and some minimum percentage of all coin-in must be paid out at each gaming device. The bonus promotions create bonus prizes which are awarded in addition to the jackpots based on a separate set of payout tables or criteria, as further described below... plus optional consolation prizes, and similar combinations. The applicant is assuming that after the jackpot is triggered, that each of the machines active have not paid out at least the minimum percentage of all coin-in regulated by the industry and also that there's unlimited amount of money in the bonus pool to be paid out to the players. The examiner would respectfully disagree, and direct contradiction is found in col 4, lines 54 "at the appropriate time, the bonus prize is awarded based on a predefined bonus criteria at an eligible gaming device, thereby depleting the bonus pool." The examiner interprets the passage cited above to mean that bonus prize can be optional consolation prizes, which does not require all players presently playing the underlying wagering game to be awarded a bonus prize.

Additionally, Personal Progressive Bonus prize enables each player to "grow" their own mystery award which only they are eligible to win. Col 15, lines 17-23 "all gaming devices participate and no consolation prizes are awarded".

Re argument C, applicant's argument that Luciano does not teach of when an "outcome occurs in the underlying wagering game that identifies that a jackpot is to be awarded to at least one the players" a special bonus event is entered for all of the players. The examiner respectfully disagrees, by allowing all players to receive the primary or the secondary prize in Luciano does not contradict having a special bonus event for all of the players. The claim recites "entered" for all of the players, not whether or not the player will receive a special bonus. Luciano explicitly teaches it in col 3, lines 5-14: award triggering events which when triggered by a player, entitling the player to the primary progressive prize. Additionally, players who have an "active" status at the time of the progressive award triggering event are entitled to share in the secondary progressive prize.

Re argument D, applicant's argument that the references fail to disclose randomly selecting bonuses is not persuasive, assuming arguendo that all players indeed receive a prize, it does not prevent the system from randomly selecting players to receive different prizes, which is still random selection. The limitation is at least supported by col 6, lines 5-7 explicitly stating "the mystery threshold is randomly selected before each new promotion starts and must fall within a range of pre-defined values" and therefore the players are randomly selected to receive different prizes.